



Atty Gen. Op. No. 10 - I 805

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June 14, 2010

Ms. Susan Rush
24 Assawoman Avenue
Ocean View, DE 19970

**RE: Freedom of Information Act Complaint
Against Ocean View**

Dear Ms. Rush:

On May 12, 2010, the Delaware Department of Justice ("DDOJ") received your complaint alleging that the Town of Ocean View ("Town") violated the Freedom of Information Act ("FOIA") in charging you an excessive amount for fulfilling your FOIA request for Mayor Wood's emails from his home computer. On May 13, 2010, the DDOJ forwarded your complaint to the Town. We received its response on May 18, 2010. This is the DDOJ's determination of your complaint pursuant to 29 *Del. C.* § 10005(e).

On April 14, 2010, you made a FOIA request to the Town for copies on CD of Mayor Wood's town-related emails that were on his home computer, including deleted emails. The Town's Freedom of Information Act Policy ¶ 5.2(B) provides that "[i]f the Town does not have the resources or equipment to duplicate requested records, the Town, at its discretion, may arrange to have records duplicated by an outside contractor. In this instance, the requestor will be liable for payment of these costs." The Town promptly advised you that you would have to pay for a computer service to obtain the requested

Ms. Susan Rush
June 14, 2010
Page 2

records. You were further advised by an April 29, 2010 email that the minimum charge of the service would be \$1875, based on a rate of \$125 per hour and an estimate of,

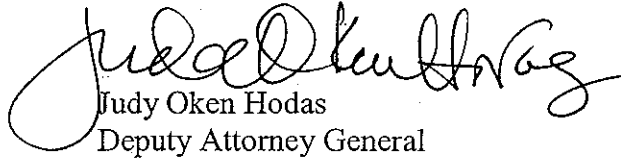
2 hours to clone the existing hard drive to a 'safe' volume for examination
5 hours to perform data recovery and extraction to an external target volume
4 hours to sort and correlate the data . . .
4 hours consulting with [Ocean View's attorney to] examine the results and remove any non-town related information.

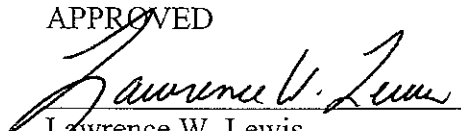
FOIA provides that "[a]ll public records shall be open to [the public for] inspection and copying. . . ." 29 *Del. C.* § 10003(a). It further requires a public body to charge the requesting party "[a]ny reasonable expense involved in the copying of [requested] records. . . ." *Id.* Subsection (b) of § 10003 requires the public bodies to "establish rules and regulations regarding . . . fees charged for copying such records."

We have previously stated that "a public body 'may choose to employ the services of a private contractor to respond to a request for copies of public records so long as the decision to do so is reasonable.'" *Del. Op. Att'y Gen. 07-IB19*, n. 3, 2007 WL 4732802 (Aug. 28, 2007). In view of the fact that Ocean View does not employ anyone who could retrieve the records you requested from a private computer, we find it reasonable for the Town to hire a contractor. The Town does have a written policy that contractor's charges will be paid by the requestor. We have no basis on which to find the contractor's hourly rate or estimate of the number of hours required are unreasonable. Therefore, we find that the Town has not violated FOIA in assessing you the independent contractor's charges for obtaining the records you are seeking.

Sincerely,

Ms. Susan Rush
June 14, 2010
Page 3


Judy Oken Hodas
Deputy Attorney General

APPROVED

Lawrence W. Lewis
State Solicitor

cc: Opinion Coordinator
Dennis L. Schrader, Esquire